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| EXAMINER |
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/800,843  
Filing Date: March 15, 2004  
Appellant(s): TAGGART ET AL.

**MAILED**  
**JUL 18 2007**  
**GROUP 3700**

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Kenneth C. Bruley  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed April 12, 2007 appealing from the Office action mailed October 26, 2006.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The final office action, mailed October 26, 2006 contained a typographical error in that the rejection of dependent claims 2-3, 6, 10-11 and 14 inadvertently failed to include the Stepp reference. However, the rejection included Stepp in that it referred to the previous rejection "as applied, above". It is clear from appellant's response that rejection of claims 2-3, 6, 10-11 and 14 was understood to include the Stepp reference. The changes are as follows in bold:

The FINAL Office Action rejected claims 1, 4, 5, 7, 8, 9, 12, 13, 15 and 16 under 35 U.S.C. § 103(a) as being unpatentable over the combination of Brame (2,691,316) in view of Tuan-Mu (2004/0035257) and Stepp (6,367,356).

The FINAL Office Action rejected claims 2, 6, 10 and 14 under 35 U.S.C. § 103(a)

as being unpatentable over the combination of Brame in view of Tuan-Mu **and Stepp**, and further in view of Carrigan (4,337,860).

The FINAL Office Action rejected claims 3 and 11 under 35 U.S.C. § 103(a) as being unpatentable over Brame in view of Tuan-Mu **and Stepp**, and further in view of Bennett, et al. (5,368,164).

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

|              |          |         |
|--------------|----------|---------|
| 2,691,316    | BRAME    | 10-1954 |
| 2004/0035257 | TUAN_MU  | 2-2004  |
| 6,367,356    | STEPP    | 4-2002  |
| 4,337,860    | CARRIGAN | 7-1982  |
| 5,368,164    | BENNETT  | 11-1994 |

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

a.) Claims 1, 4, 5, 7, 8, 9, 12, 13, 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brame (2691316) in view of Tuan-Mu (2004/0035257) and Stepp (6367356).

Brame discloses all of the claimed subject matter except for having a socket engaged by the ratchet wrench (claims 1, 4, 9 and 12), a hex shaped opening (claims 9 and 15) for engagement with the drive bar fitting, and a "fixed" fitting. Brame discloses a drive bar "11" with a fitting "10" at one end for engagement with an opening "9" of a

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double box end wrench "5" and a ratcheting wrench "7" with inner teeth "27". Tuan-Mu (paragraph [0038], figures 1, 9A-B, 10A-B) discloses a ratchet wrench having a plurality of teeth "48" on an inner circumference thereof, a socket "120, 122" having teeth at one end "122" for engagement with the inner teeth "48" of the ratchet wrench, and the socket "120, 122" having a hexagonal socket "124" at the opposite end. It would have been obvious to one having ordinary skill in the art to form the device of Brame with a socket having teeth at one end for engagement with the teeth of a ratchet wrench and having a hexagonal socket at the opposite end to allow for the engagement of variously sized/shaped workpieces as taught by Tuan-Mu.

Brame discloses a square shaped drive opening "9" at one end of the wrench opposite to the ratchet end of the wrench. With respect to claims 9 and 15, the examiner takes Official Notice that the use of hexagonal as opposed to square shaped drive openings is notoriously old and well known in the art. The well known in the art statement is taken to be admitted prior art because appellant failed to traverse the examiner's assertion of official notice. Consequently, it would have been obvious to one having ordinary skill in the art to form the square opening of Brame as hexagonal as such is notoriously old and well known in the art.

Stepp discloses a drive bar "10" having a handle "12, 14" at one end and a fixed fitting "18" at an opposite end. Stepp indicates that the fitting may be fixed or angularly movable (col. 3, lines 49-52). It would have been obvious to one having ordinary skill in the art to form the fitting "10" of Brame as fixed to provide a simple, strong and durable driver as taught by Stepp.

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b.) Claims 2, 6, 10 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brame (2691316) in view of Tuan-Mu (2004/0035257) and Stepp (6367356) as applied above, in further view of Carrigan (4337860).

Carrigan discloses tool sets including crow foot wrenches "24" having an open end and an opposite end with a square opening. It would have been obvious to one having ordinary skill in the art to provide the device of Brame with a crow foot wrench for added versatility as taught by Carrigan.

c.) Claims 3 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brame (2691316) in view of Tuan-Mu (2004/0035257) and Stepp (6367356) as applied above, in further view of Bennett et al (5368164).

Bennett et al discloses a blow molded tool set case "12". It would have been obvious to one having ordinary skill in the art to provide the device of Brame with a blow molded tool set case to removably store tools as taught by Bennett et al.

#### **(10) Response to Argument**

It is noted that the final office action contained a typographical error in that the rejection of claims 2-3, 6, 10-11 and 14 inadvertently failed to include the Stepp reference. However, the rejection included Stepp in that it referred to the previous rejection "as applied, above". It is clear from appellant's response that rejection of claims 2-3, 6, 10-11 and 14 was understood to include the Stepp reference.

In response to appellant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention

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where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, there is some teaching, suggestion, or motivation found in the references themselves. It would have been obvious to one having ordinary skill in the art to form the device of Brame with a socket having teeth at one end for engagement with the teeth of a ratchet wrench and having a hexagonal socket at the opposite end to allow for the engagement of variously sized/shaped workpieces as taught by Tuan-Mu (see page 3, paragraph [0038] of Tuan-Mu). It would have been obvious to one having ordinary skill in the art to form the fitting "10" of Brame as fixed to provide a simple, strong and durable driver as taught by Stepp (see the abstract of Stepp).

Appellant contends that Brame would lead one of ordinary skill in the art away from utilizing a drive bar with a fixed fitting. The examiner respectfully disagrees. Omission of an element and its function is obvious if the function of the element is not desired. *Ex parte Wu*, 10 USPQ 2031 (Bd. Pat. App. & Inter. 1989). Forming the drive bar of Brame with a "fixed" fitting merely eliminates the pivot element and its pivoting function. Stepp clearly teaches that a movable fitting may not be desired and a fixed fitting may be used to provide a simple, strong and durable driver. Additionally, the proposed modification or combination of the prior art would not change the principle of operation of the prior art invention being modified. The function of the device of Brame would remain operable as a ratchet wrench having an extended shank.

Appellant contends that Brame fails to provide a suggestion or motivation to include the socket disclosed in Tuan-Mu and also failed to suggest or motivate one having ordinary skill in the art to make such modifications since the hub of Brame is shaped to work directly on a nut or fastener. It is noted that Brame need not provide a suggestion or motivation to include the socket disclosed in Tuan-Mu. Tuan-Mu discloses provides a suggestion or motivation to provide a socket to allow for the engagement of variously sized/shaped workpieces. The shape of the hub of Brame does not preclude the engagement of sockets or any of a variety of workpieces. Additionally, the shape of the hub of Tuan-Mu does not preclude the engagement of a nut, a fastener, or any of a variety of workpieces. Both Brame and Tuan-Mu disclose box type ratchet wrenches for the engagement and rotation of workpieces (such as a nut or a fastener). It is further noted that the Tuan-Mu device is capable of engaging a nut or a fastener with a socket "120, 122" (figs. 9A-B, 10A-B) having hexagonal socket "124".

In response to appellant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).



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**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



D. S. Meislin  
Primary Examiner, Art Unit 3723

Conferees:

Joseph Hail  


  
Allan Shoap